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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/941,236	09/30/97	LUGUERN	J Q46923

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SUGHRUE MION ZINN MACPEAK & SEAS
2100 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20037-3202

EXAMINER

BOAKYE, A

ART UNIT	PAPER NUMBER
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2733

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DATE MAILED:

02/14/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/941,236

Applicant(s)

Luguern et al.

Examiner

Alexander Boakye

Group Art Unit

2733

☒ Responsive to communication(s) filed on Dec 6, 1999

☒ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-5 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1, 4, and 5 is/are rejected.

☒ Claim(s) 2 and 3 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Claim Rejections - 35 U.S.C. § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 4-5** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to point to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 4-5, line 1 recitation renders the claim vague since the scope of the claim is not clearly defined "said factor".

Claim Rejections - 35 U.S.C. § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

4. **Claims 1, 4 and 5** are rejected under 35 U.S.C. 102(e) as being anticipated by Hanson et al(US Patent 5,633,861).

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Regarding claim 1, Hanson et al teaches a method of managing traffic for a virtual connection of a packet-based communication network, the method comprising the step of transmitting packets from source equipment block 102a to destination equipment block 102b(column 4, lines 24-28) as shown in figure 1. Time division multiplexing is inherent in the source node to multiplex packets coming from source customer-premises equipment as shown in figure 1. Furthermore, Hanson discloses measuring the data-rate of the multiplexed packets using the transit module 112(column 2, lines 16-18 ; column 3, lines 58-59) in figure 3. Hanson further discloses temporarily storing the multiplexed packets in a queue(column 5, lines 29-31). Hanson teaches the method of transmitting the stored packets over the virtual connection using the network trunk line 120 as indicated in figure 3. Hanson teaches a method greater than 1 based on the response times of the components of the communications network(column 8, lines 38-41).

Regarding claim 4, Hanson teaches a method wherein the factor is inserted using CUF insertion in figure 3 into the packets transmitted towards the destination customer-premises equipment blocks 108 as indicated in figure 1.

Regarding claim 5, Hanson teaches a method wherein the factor which corresponds to channel utilization factor is transmitted in a special empty packet towards the destination customer-premises equipment in the absence of return traffic(column 6, lines 1-8).

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Allowable Subject Matter

5. **Claims 2 and 3** objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments filed 12/2/1999 have been fully considered but they are not persuasive.

A) Applicant argued that claim one recited, among other things, determining a factor related to the rate at which packets were transmitted over the virtual connection towards the destination equipment "wherein the factor was based on the length of the queue and the time taken to transmit the factor to the data-rate management processor to prevent the queue from overflowing". The applicant said Hanson was silent with regard to any such feature. The applicant argued that although, Hanson described one type of channel utilization factor but did not describe a factor that was based on "the length of the queue".

Claim one recited a method of managing traffic for a virtual connection of a packet-based communication network, the method consisting in transmitting packets from source customer-premises equipment to destination customer-premises equipment. Determining a channel utilization factor related to the rate at which packets are transmitted over the virtual connection towards the destination customer-premises equipment. The recitation "wherein the factor was

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based on the length of the queue and the time taken to transmit the factor to the data-rate management processor to prevent the queue from overflowing” is a recitation which is different from the previous claimed limitation of claim 1 and could not be read into claim 1. Claim one recited on a method consisting in transmitting packets from source customer- premises equipment to destination customer-premises equipment and the channel utilization factor taking into account the length of the queue and the length of the queue. Channel utilization factor is different from factor as argued by the applicant.

Hanson teaches determining a channel utilization factor related to the rate as which packets are transmitted over the virtual connection towards the destination customer-premises equipment(column 5, lines 63-66). Hanson teaches a channel utilization factor based on the length of the queue (column 5, lines 65-67).

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Boakye whose telephone number is **(703) 308-9554**. The examiner can normally be reached on M-F from 7:00am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan, can be reached on (703) 305- 4729. The **informal fax number** (Draft or proposed Amendment) for this Group is (703) 308-6743 wherein the **formal fax number** for the group is (703) 308- 9051. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 305-3900.

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A.Boakye
2/7/00



HUY D. VU
PRIMARY EXAMINER